
RECOMMENDATIONS FOR THE BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS (BVNPT)

DAFT RECOMMENDATIONS OF THE DEPARTMENT OF CONSUMER AFFAIRS

Note: The Department provided the following recommendations in draft form:

ISSUE #1: (CONTINUE REGULATION OF THE PROFESSION AND THE BVNPT?)
Should the licensing and regulation of nursing profession be continued, and be regulated by an independent board rather than by a bureau under the Department?

Recommendation #1: *The Department recommends that the vocational nursing and psychiatric technician professions should continue to be regulated by the BVNPT in order to protect the interests of consumers and be reviewed once again in four years.*

Comments: The vocational nursing and psychiatric nursing professions should continue to be regulated. The BVNPT has been an effective regulatory body for these professions. The BVNPT should be continued with a four-year extension of its sunset date.

ISSUE #2: (CLEARLY DISTINGUISH COMPLAINT INFORMATION RECEIVED?)
It is unclear how the BVNPT is counting complaints received especially those categorized as “licensee convictions” and “miscellaneous.”

Recommendation #2: *The BVNPT should clearly distinguish between complaints and information obtained through review of license applications.*

Comments: The BVNPT includes in its “complaint” statistics instances where a background check of an applicant for licensure revealed a criminal conviction which necessitated review for the possible denial of a license. Consumer (patient) complaints are distinct from applicant reviews, and should be clearly distinguished by the BVNPT to avoid potentially misleading complaint statistics.

ISSUE #3: (COLLECT INFORMATION TO DETERMINE WORKFORCE NEEDS?)
The Board may be able to collect information upon license renewal to assist in determining workforce needs for vocational nurses and psychiatric technicians.

Recommendation #3: *The BVNPT should collect workforce information about its licensees to assist in determining workforce needs for vocational nurses and psychiatric technicians.*

Comments: The Board of Registered Nursing is statutorily mandated to periodically survey the registered nursing profession and provide reports on workforce issues to policymakers. A similar workforce survey by the BVNPT, especially as California faces a nursing shortage, would be helpful in developing proposals to address the nursing shortage.

ISSUE #4: (REDUCE THE TIME IT TAKES TO PROCESS COMPLAINTS?) It is taking on average about 3.5 years from the time a complaint is filed till final disciplinary action is taken against the licensee.

Recommendation #4: *The BVNPT should develop and implement a plan to reduce the time it takes to process complaint and complete investigations.*

Comments: As noted by the JLSRC, it is taking an average of approximately 3.5 years from the time a complaint is filed with the BVNPT to final disposition of an enforcement case. The Department reviewed the case aging date from the BVNPT, and found that the average number of days an enforcement case is with the Attorney General (both the pre-accusation and post-accusation periods) has actually declined from 1998/99 to 2001/02: 711 days for vocational nurses and 656 days for psychiatric technicians in 1998/99, versus 463 days for vocational nurses and 563 days for psychiatric technicians in 2001/02.

However, the average number of days it takes to both process complaints and complete investigations has increased over the same period: for vocational nurses, complaint processing increased from 154 to 343 days, and investigations increased from 344 to 473 days; for psychiatric technicians, complaint processing increased from 173 to 284 days, and investigations increased from 338 to 544 days. While the Board's tabulation of "investigations" includes enforcement cases investigated by the Department's Division of Investigation (DOI), it also includes informal investigations conducted by the BVNPT, and inappropriately, BVNPT's review of criminal convictions revealed by a licensure applicant's background check.

An operational audit of the BVNPT conducted by the Department's Internal Audit Office completed in January of this year found that review of complaints was often not completed within the BVNPT's established processing time frames. Some acknowledgement letters are not sent in a timely manner, and processing times were incorrectly calculated and understated due to inaccurate information being inputted into the system.

The Department concurs with the audit's recommendation that the BVNPT take necessary steps to reduce its in-house processing times and provide timely notification to complainants. The Department will request that DOI review the BVNPT's investigative referrals and advise the BVNPT if such files are adequately prepared and appropriate for referral to the DOI. The BVNPT should also reduce the time it takes to complete informal investigations, and should not include in its case aging statistics criminal conviction reviews of licensure applicants.

ISSUE #5: (NOT ALLOW COST RECOVERY TO BE DISCHARGED IN BANKRUPTCY?) The BVNPT has difficulty in collecting cost recovery when a licensee is involved in bankruptcy proceedings.

Recommendation #5: *The BVNPT should take steps to prevent cost recovery orders from being discharged in bankruptcy proceedings.*

Comments: Cost recovery orders should not be discharged in a personal bankruptcy. The Department of Justice has successfully argued that “costs” are an element of the discipline sanction imposed on a licensee, so cost recovery orders are therefore considered to be penalties, not reimbursements. Clarification is needed to avoid the time and expense of repeatedly arguing this matter in federal bankruptcy courts.

ISSUE #6: (REVIEW REGULATIONS REGARDING PROVISIONAL ACCREDITATION FOR SCHOOLS?) Concerns have been expressed regarding regulations that require vocational nursing schools to maintain an average minimum pass rate on the licensure examination that does not fall below 10 percent of the average pass rate statewide.

Recommendation #6: *The BVNPT should review its regulation on taking action against vocational nursing schools whose students fall below the average exam pass rate for first time test takers and report on the effectiveness of the provisional accreditation process to the Department and the JLSRC by April of 2004.*

Comments: At a public hearing convened by the Department, and through written letters to the Department, schools and vocational nursing students have expressed concerns about BVNPT’s regulation requiring vocational nursing schools to maintain an average minimum pass rate on the licensure examination that does not fall below 10 percentage points of the average pass rate statewide for first time exam applicants. Schools that fail to meet this average within two years of initial approval of the school, or who fall below this average for two years, are subject to being placed on provisional accreditation status. Once on provisional accreditation status, a school may not expand the number of classes offered, and are subject to revocation of accreditation if the pass rate is not raised to a satisfactory level within two years.

The BVNPT, working collaboratively with the Bureau for Private Postsecondary and Vocational Education, should review its regulation as it pertains to the minimum pass rate that vocational nursing schools must maintain. It is important to balance protection of students from vocational nursing schools that fail to adequately prepare them for licensure with various factors, including student body demographics, to ensure that neither schools nor students are unfairly penalized.

ADDITIONAL JOINT COMMITTEE STAFF RECOMMENDATIONS

ISSUE #7: (CLARIFY AUTHORITY OF BVNPT TO ADOPT REGULATIONS REGARDING THE PRACTICE OF NURSING?) There may be situations in which the BVNPT should adopt regulations to more clearly define the scope of practice for vocational nurses or psychiatric technicians.

Recommendation #7: *The BVNPT should assure that any “advisory opinions” or statements issued regarding the scope of practice for vocational nurses or psychiatric technicians would not be considered as underground rule making, and should consider adopting regulations when there is serious controversy regarding any opinions or statements issued by the BVNPT regarding their respective scopes of practice.*

Comments: There have been instances in which the BVNPT has adopted advisory opinions or policy statements regarding the practice of vocational nursing rather than adopting regulations to interpret their particular scope of practice. The Attorney General’s Office has in the past advised boards that a California Supreme Court ruling, Tidewater Marine Western, Inc. v. Victoria L. Bradshaw, as Labor Commissioner [(1996) 14 Cal.4th 557], has narrowed the instances in which an agency may issue opinions or procedures without adopting them as regulations.

ISSUE #8: (BVNPT CONTINUE EFFORTS TO DEAL WITH NURSING SHORTAGE?) California is experiencing and will continue to experience a shortage of vocational nurses and psychiatric technicians.

Recommendation #8: *The BVNPT should continue to work proactively with proposed programs to expedite program approval, with schools and colleges to make reforms where necessary remove barriers for entry and articulation, and continue its participation with the Governor’s Nursing Workforce Task Force and Advisory Committee of the Board of Registered Nursing.*

Comments: In March 2002, the California Association of Health Facilities indicated that there is a shortage of 3,500 vocational nurses in long term care and estimates that 28,000 additional vocational nurses will be needed in long term care over the next ten years. Recently published reports indicate that vocational nurses now comprise almost 30% of the nations total number of nurses and that the national vacancy rate in hospitals was about 13%. According to the California Association of Psychiatric Technicians, an additional 800 psychiatric technicians are needed due to expanding health facilities.

ISSUE #9: (REINSTATE SCHOLARSHIP AND LOAN PROGRAM FOR STUDENTS?)

The BVNPT currently has no scholarship or loan repayment program similar to that of the Board of Registered Nursing and eliminated a similar program several years ago due to inadequate funding.

Recommendation #9: *The BVNPT should work with the JLSRC and the Department to consider increasing the licensing fee for vocational nurses and psychiatric technicians by \$5.00 to support scholarship and grants for students in vocational nursing or psychiatric technician programs.*

Comments: Registered nurses pay a \$5.00 assessment with their license renewal fees to support a scholarship and loan repayment program. The program's focus is to increase the number of registered nurses working in medically underserved areas and to increase the number of registered nurses from underrepresented ethnic groups. Prior to 1994, the Board administered a program which included providing scholarships and grants to meet living costs, tuition, counseling services, costs of books and uniforms and necessary transportation. This "nursing manpower development program" was repealed in 1994. However, Section 2894 of the Business and Professions Code still indicates that moneys in the Vocational Nursing and Psychiatric Technicians Fund may still be expended to promote nursing education in this state.

ISSUE #10: (REQUIRE MANDATORY REPORTING FOR VIOLATIONS OF LICENSING LAWS?) The BVNPT recommended that a new mandatory reporting statute be added specifying that employers must report to the BVNPT applicable licensing violations committed by its licensees.

Recommendation #10: *The BVNPT should seek statutory authority to require employers of vocational nurses or psychiatric technicians to report to the Board when the licensee has been suspended or terminated for cause.*

Comments: Currently, there are a number of boards which have mandatory reporting requirements when a licensee may be suspended or terminated for cause from a health facility or if the licensee is being supervised by another health care practitioner. There are also requirements that other similar licensees report violations of any of the statutes or regulations administered by the licensing board. This recent statutory authority was granted to the Respiratory Care Board effective January 1, 1999 (AB 123, Stats. of 1998, Ch. 553).

ISSUE #11: (UPDATE THE BVNPT COMPLAINT DISCLOSURE POLICY?)

The BVNPT Complaint Disclosure Policy may need to be updated because of the Department's recently issued "Recommended Minimum Standards for Consumer Complaint Disclosure."

Recommendation #11: *The BVNPT should review its current disclosure policies in light of the recent “Recommended Minimum Standards for Consumer Disclosure” issued by the Department.*

Comments: In accordance with the Information Practices Act and the Public Records Act, it is the Board's policy that the public may receive, upon request, the following information regarding a particular licensee:

- The number of complaints which, after investigation, have been found by the Board to be violations of the licensing law or regulations.
- With respect to each such complaint, the public may be provided with the date of receipt and disposition. The case disposition may be:
 - referred to formal disciplinary action;
 - found to involve a minor violation not in itself meriting disciplinary action;
 - disposed of through settlement, compromise or complaint mediation; or
 - disposed of through any other action, formal or informal.
- Once an Accusation or Statement of Issues is filed, it is public information and may be disclosed upon request.

On July 16, 2002, the Department of Consumer Affairs distributed its “Recommended Minimum Standards for Consumer Complaint Disclosure.” The Board’s Enforcement Committee is scheduled to review this policy and will submit its recommended actions to the Board accordingly.